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13 CHICO'S FAS, INC.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 EILEEN SCHLIM, on behalf of herself
17 and all others similarly situated,

18 Plaintiffs,

19 v.

20 CHICO'S FAS, INC., a Florida
21 corporation; and DOES 1 to 100,
22 inclusive,

23 Defendants.

Case No. CV 11-03229 SJO (PJWx)

DEFENDANT'S CORRECTED
NOTICE OF MOTION AND
MOTION TO DISMISS AND
MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND/OR MOTION
FOR A MORE DEFINITE
STATEMENT

CLASS ACTION

DATE: July 5, 2011
PLACE: Courtroom 1
TIME: 10:00 a.m.
JUDGE: Hon. S. James Otero

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT AND TO
 2 PLAINTIFF EILEEN SCHLIM AND HER COUNSEL:

3 PLEASE TAKE NOTICE that on July 5, 2011, at 10:00 a.m., or as soon
 4 thereafter as the matter may be heard before the Honorable S. James Otero,
 5 Courtroom 1 in the Central District of California, Western Division, at 312 N.
 6 Spring Street, Los Angeles, California, Defendant Chico's FAS, Inc. ("Chico's")
 7 will and hereby does move to Dismiss Plaintiff's First Amended Complaint
 8 ("FAC") pursuant to Federal Rule of Civil Procedure 12(b)(6) and moves to Strike
 9 portions of the FAC pursuant to Federal Rule of Civil Procedure 12(f). In the
 10 alternative, Chico's moves for a more definite statement of Plaintiff's claims under
 11 Federal Rule of Civil Procedure 12(e).

12 PLEASE TAKE FURTHER NOTICE that, at the time and place noted
 13 above, Chico's will and hereby does move the Court, pursuant to Federal Rule of
 14 Civil Procedure 12(b)(6) and(f), for an order striking the class allegations in their
 15 entirety on the ground that the class definitions are improperly merits-based,
 16 Plaintiff has pled insufficient facts to support her class allegations and Plaintiff
 17 improperly alleges class certification standards premised on California law.
 18 Chico's further will and hereby does move for an order dismissing Plaintiff's claim
 19 for declaratory relief and striking her requests for declaratory and injunctive relief
 20 on the ground that she does not have standing to seek such relief and because
 21 Plaintiff's declaratory relief claim is based solely on the other allegations in the
 22 FAC. Chico's also will and hereby does move for an order striking Plaintiff's
 23 request for an accounting and attorneys' fees as improper forms of relief under her
 24 unfair business practices claim. Lastly, because Plaintiff's FAC consists largely of
 25 formulaic recitations of legal allegations and conclusory assertions of liability,
 26 Chico's will and hereby does move for an order dismissing Plaintiff's third, fourth,
 27 fifth, sixth and seventh claims on the ground that they do not meet the pleading
 28

standards established by the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), and as applied in several subsequent wage cases.

This Motion to Dismiss and Motion to Strike and/or Motion for a More Definite Statement is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the Declaration of Julia Collins Riechert in support thereof, any Reply brief filed in support of this Motion, oral argument at the hearing and any other matters that the Court may properly consider. This Motion is made following the meet and confer efforts of counsel pursuant to L.R. 7-3, which began on May 26, 2011. *See* Declaration of Julia Collins Riechert in support of Defendant's Motion to Dismiss and Motion to Strike and/or Motion for a More Definite Statement ¶¶ 2-7.

STATEMENT OF RELIEF SOUGHT

Chico's seeks the striking of Plaintiff's class definitions and class allegations and dismissal of Plaintiff's third, fourth, fifth, sixth, seventh and ninth claims. Chico's also seeks a striking of Plaintiff's requests for declaratory and injunctive relief, an accounting and attorneys' fees under the unfair business practices claim. In the alternative, Chico's seeks a more definite statement of Plaintiff's claims.

Dated: May 31, 2011

LYNNE C. HERMLE
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JULIA C. RIECHERT
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By: /s/ Lynne C. Hermle
LYNNE C. HERMLE
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CHICO'S FAS, INC.